



# Attorney General

1275 WEST WASHINGTON

Phoenix, Arizona 85007

Robert R. Corbin

November 17, 1983

LAW LIBRARY  
ARIZONA ATTORNEY GENERAL

The Honorable Luis A. Gonzales  
Arizona State Senator  
State Capitol, Senate Wing  
Phoenix, Arizona 85007

Re: I83-128 (R83-031)

Dear Senator Gonzales:

We are writing in response to your request for an opinion concerning the scope of the "political caucus" exception to the Open Meeting Law.

A.R.S. § 38-431.08 enumerates several exceptions to the Open Meeting Law. The one pertinent to your inquiry is paragraph 1 of subsection A, which provides an exception for "[a]ny judicial proceeding of any court or any political caucus." The term "political caucus" is not defined by statute or Arizona case law, but it is well settled that when a statute fails to define a term "courts will not read into the definition of a term something other than the ordinary meaning." Parise v. Industrial Commission, 16 Ariz.App. 177, 492 P.2d 426 (1971).

The ordinary meaning of "political caucus" encompasses, within its terms, a meeting of members of a legislative body who belong to the same political party or faction to determine policy with regard to proposed legislative action.<sup>1/</sup> We think implicit in this ordinary meaning is a requirement that the caucus be formed with members from a partisan-elected public body because, by definition, a non-partisan public body does not have members who represent factions.

---

1. Dictionary of American Politics, A Dictionary of Contemporary American Usage, A Dictionary of Politics, A Dictionary of the Social Sciences, Encyclopedia Americana, The Random House Dictionary, and Safire's Political Dictionary all follow this central theme.

The Legislature designed the Open Meeting Law to be expansive in its coverage. With great detail and clarity the Open Meeting Law defines "public body" to include the broadest range of governmental organizations created under Arizona law. See A.R.S. § 38-431. Additionally, the Open Meeting Law expressly defines "meeting" to include "any deliberation" of a public body [A.R.S. § 38-431.3] and charges that "[a]ll meetings of any public body shall be public meetings and all persons so desiring shall be permitted to attend and listen to the deliberations and proceedings." A.R.S. § 38-431.01.A (emphasis supplied). By defining these terms expansively, the Open Meeting Law advances the goal of allowing any citizen of this state to witness all governmental policy-making activities, including any discussions leading to formal decisions made by the public body.<sup>2</sup>

To ensure that the Open Meeting Law is construed broadly, the Legislature directed that "any entity charged with the interpretation of this article shall . . . construe any provision of this article in favor of open and public meetings." A.R.S. § 38-431.09. The converse of this directive seems equally true: to construe the Open Meeting Law broadly, the exceptions and limitations should be construed narrowly.

In light of the emphasis on including any policy deliberation of all Arizona public bodies in the coverage of the Open Meeting Law and the directive to construe exceptions narrowly, we believe the narrowest possible interpretation of the exception should be applied.

---

2. "The intent of the legislature was to open the conduct of the business of government to the scrutiny of the public and to ban decision-making in secret." Karol v. Board of Education Trustees 122 Ariz. 95, 593 P.2d 649, 651 (1979). See also Sacramento Newspaper Guild v. Sacramento Board of Supervisors, 263 Cal. 41, 69 Cal. Rptr. 480 (1968) (upholding injunction to restrain county board of supervisors from holding pre-meeting caucuses: "There is rarely any purpose to a nonpublic pre-meeting conference except to conduct some part of the decisional process behind closed doors."); Time Publishing Company v. Williams, 222 So.2d 470, 473-474 (Fla. Dist. Ct. App. 1969) ("Clearly the legislature must have intended to include more than the mere affirmative formal act of voting on an issue or the formal execution of an official document.").

Several possible interpretations of the "political caucus" exception exist.<sup>3/</sup> One might attempt to apply the exception to private meetings of any public body. Clearly this interpretation would be improper. After describing in detail the breadth of the governmental bodies to be covered by the Open Meeting Law, the Legislature would not leave a giant loophole to allow any public body to escape coverage. To allow a public body to affix the "political caucus" label to its gatherings to avoid complying with the state's Open Meeting Law serves no legitimate public interest. "It makes no difference what descriptive label or formality is accorded to the assemblage of board members. It may be called a formal or informal meeting or a luncheon. If legal action [or any deliberation via any exchange of facts that relate to a matter which foreseeably might require some final action by the public body] is taken, the assemblage is subject to the Act." Ariz. Atty. Gen. Op. 175-8. Thus, the key is the substance, not the label, of the meeting.

Alternatively, one might attempt to limit this exception strictly to political party organizations. Yet this approach is inappropriate because political parties are not public bodies as defined in A.R.S. § 38-431.5. As private organizations, political parties do not need an exemption to hold private meetings.

Finally, one might attempt to limit this exception only to the Legislature. However, the exception set forth in A.R.S. § 38-431.08.A.1 is for "any political caucus." (Emphasis added). When this exception is viewed in conjunction with paragraph 2 of subsection A, which excepts "conference committee[s] of the Legislature," we think that if the

---

3. Although not dispositive of this issue, we note that courts have differed in construing "political caucus" exceptions in various state statutes. In Sciolino v. Ryan, 81 A.D.2d 475, 440 N.Y.S.2d 795 (App. Div. 1981), the exception was read narrowly to apply only to the private matters of a political party and not to the discussion of any public business. In contrast, the court in State ex rel. Lynch v. Corta, 71 Wisc.2d 662, 239 N.W.2d 313 (1976), read the exception more expansively, to include meetings at which public matters are discussed.

The Honorable Luis A. Gonzales  
November 17, 1983  
Page 4

Legislature intended to similarly limit the "political caucus" exception, it would have expressly so stated.<sup>4/</sup>

Accordingly, we conclude that the "political caucus" exception applies to partisan-elected public bodies in the exercise of their purely legislative functions.<sup>5/</sup> The scope of permissible caucus activity is limited to considering party policy, with respect to a particular legislative issue. Such a discussion must be limited to considering matters of party policy and cannot be used to reach a "collective decision, commitment, or promise" by members of the caucus, when that membership constitutes a quorum of the public body. A public body may not use the political caucus as a means of taking legal action in secret. If a public body were to develop a pattern of conduct demonstrating that decision-making had been made in secret, that conduct would violate the Open Meeting Law and subject those responsible to penalty.

Sincerely,



BOB CORBIN  
Attorney General

BC:LPS:lm

---

4. A number of states do limit the "political caucus" exemption to their state legislatures. Some states expressly limit the "political caucus" exemption to meetings by members of the legislature by statute. See, e.g., Utah Code Ann. § 52-4-2(2) (1981) ("Public body' does not include any political party, group or caucus or rules or sifting committees of the legislature" for open meetings laws purposes); Wis. Stat. Ann § 19.87 (West 1982) ("No provision of [the Wisconsin Open Meeting Law] shall apply to any partisan caucus of the senate or any partisan caucus of the assembly, except as provided by legislative rule."). Other states exempt political party caucuses of members of the legislature from open meeting requirements by construction. See, e.g., People ex rel. Difanis v. Barr, 83 Ill.2d 191, 46 Ill. Dec. 678, 414 N.E.2d 731, 738 (1980) (ruling that the "political caucus" exception "refers only to private meetings between General Assembly members, the Illinois Supreme Court held that a "caucus" of Democratic city council members did not escape the Illinois Open Meeting Law); N.M. Att'y Gen. Op. No. 76-21 (New Mexico's Open Meetings Law does not apply to a caucus of the majority party of the state house of representatives).

5. For example, the purely legislative functions of a county board of supervisors include enactment of ordinances and appropriation of monies.